

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

CIV 01-243 JP/KBM  
CR 99-512 JP

JORGE OROZCO-HERRERA,

Defendant-Movant

PROPOSED FINDINGS AND RECOMMENDED DISPOSITION

This matter is before the Court on Defendant's Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255, *Doc. 1*, and the United States' Response, *Doc. 12*.<sup>1</sup> Defendant was found ineligible for the "safety valve" provision and sentenced to a mandatory minimum sentence of 120 months. Over the course of four claims he contends that his attorney rendered ineffective assistance in connection with his guilty plea by: not objecting to the conviction that rendered him ineligible for the safety valve provision, not arguing for a downward departure based on the provision, and not arguing for a downward departure based on his role as a minimal or minor participant.

The record contains no support for these assertions. To the contrary, defense counsel moved for a continuance to secure documents needed to make his argument that the conviction in question should not be counted. The motion was granted. Counsel subsequently filed written objections to the presentence report contesting the validity of the conviction and arguing

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<sup>1</sup> Because Defendant spells his name "Orozco" on his petition, that is the spelling I use here. The criminal file uses the spelling "Orosco."

Defendant because was less culpable than his codefendants so it would be unfair to deny him the benefit of the safety valve provision. Chief Judge James A. Parker held an evidentiary hearing before sentencing Defendant. The minutes of that hearing show that the Court inquired into Defendant's role as well as the contested conviction. *See Docs. 70, 71, 77, 79* in CR 99-512.

Wherefore,

**IT IS HEREBY RECOMMENDED THAT** the § 2255 petition be denied and this action dismissed with prejudice.

**THE PARTIES ARE FURTHER NOTIFIED THAT WITHIN 10 DAYS OF SERVICE** of a copy of these Proposed Findings and Recommended Disposition they may file written objections with the Clerk of the District Court pursuant to 28 U.S.C. § 636(b)(1). **A party must file any objections with the Clerk of the District Court within the ten day period if that party wants to have appellate review of the proposed findings and recommended disposition. If no objections are filed, no appellate review will be allowed.**

  
UNITED STATES MAGISTRATE JUDGE